In the Court of Appeals of the State of Alaska

Adam Phillip Ives, Appellant, v. **State of Alaska,** Appellee.	Court of Appeals No. **A-13900** **Order** Date of Order: **10/22/2021**

Trial Court Case No. **3AN-21-06756CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

On September 9, 2021, Adam Phillip Ives was arrested and charged with being a fugitive from justice under AS 12.70.120. The fugitive complaint alleged that the state of Washington had issued a warrant for Ives's arrest and had confirmed that it would extradite Ives.

It is undisputed that this was the second time Ives was arrested on the same allegation; the first time was on January 15, 2020. The complaint in the prior case was based on the same Washington arrest warrant and also included information that Washington had confirmed it would extradite Ives.

After Ives's January 2020 arrest, he was released from custody on a $100 cash appearance bond. He appeared for his scheduled hearings in that case, but Washington did not obtain a governor's warrant and his case was dismissed on April 15, 2020.

But after Ives was arrested and charged a second time in September 2021, the district court set bail at $150,000 cash appearance plus a third-party custodian. In setting this bail, the trial court found that the prior case was not relevant to the pending matter.

Ives filed a bail appeal, arguing that the bail set by the district court was excessive. Ives also argued that "Alaska Statutes 12.70.140 and 12.70.160 limit an accused person's detention without a governor's warrant to a single 90-day period at most, not renewable 90-day periods accomplished by re-arresting and re-charging a previously discharged prisoner." According to Ives, allowing a fugitive to be re-arrested multiple times for the same conduct "would clearly violate due process."

While Ives's bail appeal was pending before this Court, the district court reduced Ives's bail and imposed as conditions of release that Ives post a $1,000 performance bond and be placed on electronic monitoring by Alaska Defendant Monitoring.

In his notice alerting this Court of his anticipated release from custody in this case, Ives argues that his bail appeal is not moot because he remains burdened by the district court's bail order.

Because Ives has represented that he will be imminently released from custody, he has no right to file a bail appeal.[1] However, Ives is entitled to petition this Court to review the trial court's bail decision.[2]

To the extent Ives is still challenging the excessiveness of his bail, we decline to exercise our discretionary authority to review that claim.

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[1] *See Isadore v. State*, 378 P.3d 406, 407 (Alaska App. 2016) (interpreting AS 12.30.030(a)).

[2] *Id.*

However, we conclude that Ives's second claim on appeal raises an important question of law that is capable of repetition but evading review.[3] This claim requires us to interpret the Uniform Criminal Extradition Act to determine whether the State may "commit" Ives on the current complaint, given that (according to Ives) he was previously "committed" for 90 days on the same allegation and then discharged.[4]

Additionally, we must determine whether the use of the words "commit" and "commitment" in the Act refer to both incarceration and release on bail or whether they refer only to incarceration.[5]

Accordingly, IT IS ORDERED:

1. Because Ives anticipates being released from custody, we convert his

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[3] *See* Alaska Appellate Rule 402(b)(2) and (4) (review may be taken when the order involves an important question of law on which there is substantial ground for difference of opinion, and review of the order may advance an important public interest which might be compromised if the petition is not granted, or when the issue is one that might otherwise evade review and an immediate decision by the appellate court is needed for guidance or is otherwise in the public interest).

[4] *See, e.g.*, *Commonwealth ex rel. Douglass v. Aytch*, 310 A.2d 313, 316 (Pa. Super. 1973) (Spaeth, J., concurring) (it was not superfluous to indicate that the defendant's discharge after 90 days was "with prejudice" because this recognized that the defendant could not again be arrested under the Uniform Criminal Extradition Act except pursuant to a Governor's warrant).

[5] *See, e.g.*, *Orton v. State*, 431 So.2d 236, 237 (Fla. Dist. App. 1983) (Uniform Criminal Extradition Act requires discharge of the accused "from custody or bond" after the expiration of the aggregate 90 day statutory time period); *Carter v. State*, 708 P.2d 1097, 1100 (Okla. 1985) (same).

bail appeal to a petition for review. We GRANT review solely as to the question of whether Ives can be held on any bail — in particular, (1) whether AS 12.70.140 and AS 12.70.160 limit an accused person's commitment without a governor's warrant to a single 90-day period and (2) whether "commitment" includes bail restraint. We DENY review as to all other claims.

2. *Transcripts*. If either party wishes to designate a transcript pursuant to Alaska Appellate Rule 210(b), they shall do so within 10 days.

3. *Trial Court File*. The clerk of the trial court need not number the trial court file. Rather, the clerk shall send the trial court file to Records Management Services to be scanned (the same procedure as if this case had been appealed). The Appellate Court Records Office shall prepare and distribute the record on or before **November 15, 2021**.

4. *Briefing deadlines*. Following the certification of the record, Ives shall have 30 days to file an opening brief conforming to Appellate Rule 212. Upon the filing of Ives's brief, the State shall have 30 days to file a brief. Ives shall then have 20 days to file any reply brief.

Entered at the direction of the Court.

Clerk of the Appellate Courts

M. Montgomery

Meredith Montgomery

cc: Judge Nesbett
ACRO

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